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## CHAPTER 2. COMPLIANCE AND ENFORCEMENT POLICY AND OBJECTIVES

200. PURPOSE. This chapter sets forth the general policies and objectives of the FAA's compliance and enforcement program.

201. THE NEED FOR A COMPLIANCE AND ENFORCEMENT PROGRAM.

a. A central mission of the agency is to promote aviation safety and security in civil aeronautics. To achieve this, the agency establishes regulatory standards and requirements, found in the Federal Aviation Regulations (FAR), under the following statutory direction:

(1) The Federal Aviation Act of 1958, as amended, (FAAct), places a duty on the Administrator to prescribe reasonable rules and regulations and minimum standards in the public interest.

(2) Section 103 of the FAAct requires that the Administrator consider the following, among other things, as being in the public interest:

(a) The regulation of air commerce in such a manner as to best promote its development and safety; and

(b) The promotion, encouragement, and development of civil aeronautics.

(3) Section 316(a)(1) of the FAAct requires that the Administrator prescribe rules and regulations "requiring practices, methods, and procedures . . . necessary to protect persons and property aboard aircraft operating in air transportation . . . against acts of criminal violence and aircraft piracy."

(4) Section 601(b) of the FAAct requires FAA to give full consideration to the duty resting upon air carriers "to perform their services with the highest possible degree of safety in the public interest."

(5) The amendments made to the FAAct by the Airline Deregulation Act of 1978 demonstrate Congress' intent that the implementation of the FAAct must result in no decrease of the high standards of safety in air transportation attained in the United States. Section 102(a)(2) of the FAAct specifically provides that one of the considerations the Administrator must make as being in the public interest and in accordance with

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public convenience and necessity is the prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

b. The FAA's compliance and enforcement program is designed to promote compliance with both the statutory and the regulatory requirements. The program ranges from educational and remedial efforts, including administrative action, to punitive legal enforcement remedies, including criminal sanctions in the most serious cases.

c. This program is applicable to all activities regulated by the agency for which legal enforcement penalties are prescribed. When violations occur, whether they involve the operation of an airport, the production of aircraft, the performance of aircraft maintenance, the operation of aircraft, or the carrying out of civil aviation security programs, FAA personnel must take the action most appropriate to achieve future compliance.

## 202. COMPLIANCE AND ENFORCEMENT PHILOSOPHY.

a. Voluntary compliance. Civil aviation safety and security depend primarily on voluntary adherence to legal requirements. Thus, one of our foremost efforts to achieve compliance should be directed toward programs to promote a clear awareness and understanding of the governing regulations.

b. Education. Education must be an ongoing component for a compliance program to be successful. Consequently, FAA personnel should take advantage of opportunities during their surveillance and inspection activities to enhance a certificate holder's understanding of the regulatory requirements. In addition, education can be fostered through public awareness programs and other special aviation educational efforts.

c. Surveillance and detection. An important element of an effective compliance program is the prompt discovery of instances of noncompliance. While the agency has programs to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with the agency's statutory mandates, there must be a particularly high level of surveillance of air carrier operations.

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d. Notifying persons of violations. In any situation where FAA personnel identify a potential violation, they should take appropriate steps to notify immediately a responsible person who can take appropriate action to prevent it. FAA personnel may use such means as counseling, an agreement to take immediate corrective action by the aircraft operator, or the use of the provisions of section 605(b) of the FAA Act with respect to air carrier aircraft that are not in condition for safe operation. In addition, the procedures of Compliance and Enforcement Bulletin 90-5 must be followed in the case of suspected violations of the FAA's alcohol and drug-related prohibitions. In cases involving the detection of simulated weapons during FAA screening evaluations, the procedures of Compliance and Enforcement Bulletin 92-3 must be followed.

e. Investigation and reporting. When an investigation is warranted, it should be conducted promptly. There must be an unbiased gathering of all facts, focused investigation, and accurate reporting. Poor investigation weakens the effectiveness of the enforcement program. A violation report without all of the facts only leads to delays that compromise the objectives of fair and responsive enforcement. Such reports also can mislead reviewing authorities and result in incorrect or inappropriate actions.

f. FAA response to violations. Every apparent or alleged violation must be investigated and appropriately addressed.

(1) Firmness. The agency has a wide range of options available for addressing violations. They range from simple counseling and administrative action to formal legal enforcement action. Statutory methods for enforcing the requirements of the FAA Act and the regulations governing the safe operation of aircraft include the following: amendment, suspension, and revocation of certificates (FAA Act, sections 501 and 609); civil and criminal penalties (FAA Act, sections 901, 902); aircraft seizures (FAA Act, section 903); judicially enforceable orders (FAA Act, section 1007); and special investigations and other acts deemed necessary to carry out the provisions of the Act (FAA Act, section 313). Regulations governing the transportation of hazardous materials by air are enforceable by means of civil and criminal penalties, orders directing compliance, and equitable judicial relief (Hazardous Materials Transportation Act (HMT Act), sections 109, 110, and 111).

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(2) Compliance and enforcement action is undertaken to--

(a) Prevent future actions that would violate the regulations (e.g., immediate corrective action after counseling or a letter of correction or warning notice; cease and desist orders; injunctions);

(b) Impose punitive sanctions to deter violations (e.g., punitive certificate actions or civil penalties); and

(c) Achieve remedial purposes (e.g., administrative remedial training; voluntary remedial action under the reporting and correction policy; certificate suspension pending demonstration of qualifications; revocation for lack of qualification or competency; or a remedial civil penalty).

g. Fairness. To be effective, the agency's compliance and enforcement program must be fair and reasonable in fact, and should be perceived as fair by those subject to regulation. This does not and should not imply an unwillingness to apply the full force of statutory sanctions where warranted. It does encompass the right of an alleged violator to be given objective, evenhanded consideration of all circumstances surrounding the allegations before final action is taken. It also requires good faith efforts to understand the alleged violator's position and take it into account, as well as to apprise the alleged violator of the agency's position in a timely manner.

h. Timeliness. The agency's discovery of and response to violations also should be timely. Delays in investigation or processing of violation reports can impact the effectiveness of the agency's compliance and enforcement program in several ways. Delays may permit an unsafe condition to continue if prompt corrective action is not taken. Delays also de-emphasize the seriousness of a given violation and diminish the deterrent value of any enforcement action taken. The deterrent quality of enforcement action, and effective linking of the enforcement sanction to objective change in compliance behavior, can be realized if investigations are diligently and promptly conducted, and the appropriate sanction is administered within a reasonable time period. By the same token, if the allegations of violation are not sustained, any unwarranted delay in processing the case may impose an unjustified hardship.

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The time needed for investigation and processing will vary depending on the complexities involved in each case. Certain cases, because of their effect on safety, including the need for emergency action, will demand immediate involvement of the entire investigative/legal team to resolve regulatory noncompliance quickly, sometimes in only a matter of hours or a few days.

### 203. GUIDELINES FOR PROCESSING ENFORCEMENT ACTIONS.

a. Selection of enforcement action. Responsible FAA personnel must review the evidence compiled during an investigation to determine whether a violation of the regulations has been committed. If the evidence fails to support a violation or demonstrate a lack of qualifications or competency of a certificate holder, then neither administrative nor legal enforcement action is appropriate. In determining the appropriate enforcement action that should be taken for regulatory noncompliance, FAA investigative personnel must consider the administrative remedies set forth in paragraphs 203b(1) through 203b(4). The sanction guidance policy should be used only in those cases where a determination has been made that legal enforcement action is warranted.

b. Enforcement remedies.

(1) Reinspection and reexamination. When FAA personnel discover facts that indicate a certificate holder may not be qualified or lacks competency to hold a certificate, the reexamination or reinspection authority of section 609 of the FAA Act should be used. Reexamination or reinspection of a certificate holder does not preclude taking punitive enforcement action when appropriate. When a certificate holder fails to comply with a request for reinspection or reexamination, FAA personnel should follow the procedures of Chapter 8, Reexamination and Reinspection Under Section 609 of the FAA Act.

(2) Remedial training (with administrative action). In evaluating evidence of a violation by a certificate holder, appropriate FAA personnel must determine whether remedial training is appropriate in lieu of legal enforcement action. If a determination is made that remedial training is appropriate, a certificate holder must be afforded an opportunity for training in place of the imposition of punitive action. The corrective action taken must be documented. FAA personnel should follow the procedures in Compliance and Enforcement Bulletin 90-8 when remedial training is determined to be appropriate.

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(3) Reporting and correction. FAA personnel must determine whether reporting and correction policies are applicable with respect to violations by air carriers, production approval holders, and other categories of certificate holders to which these policies may be applied. If a certificate holder promptly discloses a violation to FAA voluntarily and otherwise meets all of the requirements of the reporting and correction policies, then a letter of correction should be issued.

(4) Administrative action. When FAA personnel conclude that none of the policies set forth in paragraphs 203b(1) through 203b(3) apply, then they must determine whether administrative action is appropriate by evaluating the facts surrounding a violation against the criteria set forth in paragraph 205.

(5) Legal enforcement action. When FAA personnel determine that legal enforcement action should be pursued for a violation, they must determine the type and amount of legal enforcement sanction by consulting the sanction guidance policy. FAA personnel must strictly observe limitation periods imposed by statute or regulation for the initiation of legal enforcement actions.

\* c. Enforcement Case Priorities and Periodic Program Review of Legal Enforcement Processing.

(1) Enforcement case priorities focus agency enforcement efforts on those violations that have the greatest safety impact and on identified areas of critical safety and security noncompliance. The agency's highest priorities among enforcement cases are emergency actions, and generally those that involve certificate holder qualifications. Following those cases, the agency's priority enforcement actions are those types of cases identified at a national level by program offices as warranting aggressive, swift prosecution. Under a projected annual enforcement plan, agency investigative and legal resources will be directed toward the inspection, surveillance, and vigorous enforcement of specified types of

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violations determined to be most significant. Through planned inspections and swift, aggressive enforcement action, such prioritization may have a greater deterrent effect on future noncompliance and avert foreseeable safety problems.

(2) Prior to the beginning of each fiscal year, each program office (e.g., Flight Standards Service, Aircraft Certification Service, Office of Aviation Medicine, Office of Airport Safety and Standards, Office of Civil Aviation Security Operations) will review appropriate information concerning safety or security weaknesses, experiences with noncompliance problems, and trend analyses of enforcement data. Based on this review, the director of each program office will identify critical safety or security concerns that should be subject to enhanced enforcement and types of enforcement actions that should be given priority consideration, in the upcoming fiscal year. Representatives of each program office and the Office of the Chief Counsel will meet prior to the beginning of each fiscal year to review the safety or security concerns and priority cases identified at a national level by each program office. These representatives will also share information regarding critical areas of noncompliance and problems encountered in carrying out the agency's enforcement program. During this review, consideration will be given to whether legal resources are adequate to support all the program offices' priorities; revisions to the priorities may be needed. Following this meeting, the enforcement case priorities identified by each program office will be forwarded to the Assistant Chief Counsel for Enforcement, who will advise the Regional Counsels of each program office's priorities. Each program office will disseminate information regarding its national priorities to its field personnel. The enforcement case priorities are flexible and may be changed as needs are identified. They are generally broad in scope addressing national concerns but may be focused enough to address regional concerns or problems, including those that may involve a single regulated entity.

(3) Each Regional Counsel should meet at least quarterly with the respective program divisions to review the status of cases referred for legal enforcement action. The purpose for this review is a joint counsel-program assessment

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of the caseload management, with an emphasis on the timeliness and effectiveness of case selection, investigation, initiation, and processing. In addition, the review should include an analysis of: trends, inconsistent case handling, lack of reasonable consistency in sanctions, repetitious conduct, and any other significant evaluative factors. At this review, the need to reprioritize and process cases warranting the greatest urgency must be considered.

(4) Regions that are unable to handle any national concerns or case priorities because of more pressing regional matters or other workload demands will immediately advise the Assistant Chief Counsel for Enforcement or affected program office director, as appropriate. Headquarters and regional enforcement personnel will determine whether handling such national concerns and case priorities can be reassigned to headquarters divisions or other regions with available enforcement resources to ensure that all national enforcement priorities are being addressed.

(5) For cases other than those identified as national priorities, if an assessment indicates that more cases are being submitted to legal counsel than can reasonably be initiated and processed, then cases that are being unduly backlogged must be reevaluated to determine if any alternative enforcement action would be appropriate and warranted, and redistributed, if appropriate, for processing by other regions or headquarters staff with greater available enforcement resources.

(a) With respect to these cases, the reconsideration or reassessment of a given sanction is not to be considered a weakening or lack of enforcement resolve. On the contrary, that resolve is most evident when both corrective and deterrent actions are taken in a timely manner. For example, sometimes an administrative closure action taken immediately after a violation occurs can serve as a more effective deterrent than an unduly delayed legal action, taken later. There is a wide range of effective tools available to investigative personnel and prosecuting attorneys, and all of them should be considered in light of the circumstances of

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each individual case. The tool selected should be the one that most effectively and timely serves to correct the noncompliance and deter future violations.

(b) When enforcement investigative reports for these cases are returned to investigating field program offices, the field offices will carefully reevaluate and quickly respond to each returned legal enforcement case in light of the explanation provided by the program division manager. Specific attention will be given to the nature of the violation and other relevant mitigating and aggravating factors and elements, and whether safety and the public interest continue to require that legal enforcement action be taken. If the investigating office determines that the recommended legal enforcement action should be taken, it will coordinate this decision with the respective program division manager.

(6) The goal of the FAA generally is to initiate cases referred for legal enforcement action within 180 days of the date of the violation. Cases involving delayed discovery of a violation must be expedited. It is understood that this objective may not always be met because of: lack of resources, case complexity, investigative delays due to non-cooperation of witnesses or difficulty in obtaining evidence, or other higher agency safety priorities. But generally, it is the expected agency norm that the investigation will be completed and the case will be initiated by counsel within 180 days. Meeting this norm requires the closest cooperation, communication, and teamwork between investigative and prosecuting enforcement personnel. Failure to meet the norm in any individual case will not be the sole cause for dismissing that case. Where caseloads regularly fail to meet this norm, there should be a reassessment of office procedures and case management, under the provisions in paragraphs 203(c)(1) through 203(c)(5). In any event, limitation periods imposed by statute or regulation for the initiation of FAA legal enforcement actions must be strictly observed.

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\* (7) In cases where reviews indicate that delay is not a factor, there still may be a need to make other adjustments in case handling such as: the consolidation of related cases involving the same airman, operator, or manufacturer; the need to take emergency action where a reporting office has overlooked that need; or the need to reevaluate a case technically. These or other similar adjustments should be considered during these periodic program meetings. \*

#### 204. PROCEDURES FOR SELECTING COMPLIANCE AND ENFORCEMENT ACTION.

##### a. Program office responsibilities.

(1) The initial priorities of FAA personnel must be to correct any ongoing noncompliance and to take appropriate action when they determine that a certificate holder lacks the requisite qualifications or competency.

(2) Once the underlying noncompliance is corrected, responsibility for selection of the enforcement remedy that best fits the circumstances begins with FAA personnel who investigated the case. In most cases, they are in the best position to evaluate various factors, such as the alleged violator's compliance attitude and whether an alternative to legal enforcement action may be sufficient to achieve compliance. Authorizing investigative personnel to make these determinations should also result in prompt action.

(3) FAA investigative personnel are expected to exercise sound discretion and professional judgment in making these determinations in accordance with agency policies and guidance. The selection of administrative action or legal action must be made in accordance with the guidance and standards contained in this order.

(4) FAA personnel should consider whether application of progressive discipline will achieve the desired compliance. In some circumstances, for example, it may be appropriate to address a first-time violation with a letter of

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correction. The letter, with its associated corrective action, may be adequate to achieve sustained compliance. Should that approach prove to fail, it may be necessary to impose a punitive legal enforcement sanction, i.e., a civil penalty or certificate suspension, to produce an adequate deterrent to future violations. Repetitive violations by a certificate holder may even demonstrate a lack of qualification warranting certificate revocation. This progressive discipline approach is, however, totally inappropriate in certain aggravated circumstances, such as flying while intoxicated, intentional falsification, and reckless or grossly careless operation of an aircraft.

(5) The agency's response to noncompliance, particularly the use of legal enforcement action, is intended to deter not only the violator but others as well. FAA personnel should consider this factor in deciding what action is most appropriate.

(6) Agency management will periodically review the determinations of investigative personnel in enforcement cases. The managers will look at whether they have adequately considered all relevant facts and circumstances in a case and have explained their choice of enforcement action. This evaluation will help to ensure reasonable consistency in the manner in which violations are handled and that investigative personnel are properly exercising their discretion.

(7) The agency will periodically review data to determine whether the agency's response to violations is having the desired effect of bringing about compliance. If it is not, actions such as special emphasis programs to target particular violations can be initiated.

b. Review of recommendations of FAA investigative personnel. In those cases where an enforcement investigative report (EIR) is prepared, it will be reviewed by appropriate investigative and legal personnel to ensure consistency in the application of agency compliance and enforcement policies. In this review, due deference must be afforded the reporting investigative employee's considerations in determining the appropriate action. FAA personnel at all levels, however, are expected to exercise sound judgment and discretion to propose, modify, and substitute alternative remedies within existing guidance to correct regulatory noncompliance. Deliberations by investigative personnel regarding sanction determinations, as well as communications between investigative personnel and legal counsel, are privileged.

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c. Responsibility for deciding the type of enforcement remedy. FAA investigative personnel, appropriate to the violation involved, will decide, subject to the criteria in this order, whether compliance may best be obtained through administrative or legal enforcement action. In making this determination, the supervisor will afford due deference to the investigating inspector's recommendation if it is substantiated.

d. Responsibility for determining legal enforcement sanction. If legal enforcement action is selected (e.g., certificate action or civil penalty action), the amount of sanction should be determined in accordance with the guidance contained in the sanction guidance policy. FAA personnel should give due deference to sanction recommendations of subordinate and client offices if they are properly justified and explained. The amount of sanction sought in a legal enforcement action is the product of a joint determination by the program office and legal counsel. FAA personnel, at all levels, however, are expected to exercise sound judgment and discretion to propose, modify, and substitute alternative remedies to correct regulatory noncompliance, within applicable policy guidance.

e. Prosecutorial discretion. Agency attorneys exercise broad prosecutorial discretion in the handling of legal enforcement actions. This discretion extends from the initial determination of whether legal enforcement action is warranted for an alleged violation through settlement of a case. FAA personnel also exercise discretion in selecting an appropriate amount of sanction for a particular violation, within the parameters of the sanction guidance policy. Through application of the standards and criteria set forth in the sanction guidance policy, FAA personnel select the appropriate penalty within the sanction ranges in the table of sanctions based on the relevant facts and circumstances surrounding a violation. In cases where policy permits, agency attorneys, in consultation with program offices, may determine that an amount or type of sanction outside the ranges is appropriate. In this regard, agency attorneys are expected to use sound, rational, prosecutorial judgment to make decisions that further the agency's safety mission and the public interest. Subsequent to the initiation of a case, agency attorneys, in consultation with the concerned program office, may settle cases, when, in their judgment, the settlement is warranted by the facts and law, other litigation risks, and would prevent unnecessary litigation.

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f. Informal communications with agency attorneys.

Supervisors and managers of headquarters, regional, or field personnel involved in compliance and enforcement should encourage open dialogue and sharing of information and opinions between investigating program office personnel and regional and headquarters attorneys. Open and informal communication between the investigative and legal staffs will improve the effectiveness of and promote consistency in the enforcement program.

205. ADMINISTRATIVE ACTION. Where legal enforcement action is not appropriate, a warning notice or letter of correction may be issued as provided in section 13.11 of the Federal Aviation Regulations (FAR) and Chapter 11, Administrative Enforcement Action. Administrative action is not to be taken solely as a matter of convenience or where evidence to support a finding of a violation is lacking. The operational field office of Flight Standards, Aircraft Certification, Airports, or Civil Aviation Security, appropriate to the violation involved, will decide whether compliance may be obtained best through administrative action or through legal enforcement action, subject to the criteria in this paragraph or other guidance in this order. A decision to take administrative actions ordinarily does not need to be coordinated above the cognizant field office level.

a. Legal effect. Administrative actions are not adjudications. Neither a letter of correction nor a warning notice constitutes a finding of violation and, therefore, the opportunity for notice and hearing are not required.

b. General requirements. Administrative enforcement action may be taken in lieu of legal enforcement action when all of the following elements are present:

- (1) Applicable law does not require legal enforcement action;
- (2) Lack of qualification or competency was not involved;
- (3) The violation was inadvertent and not deliberate;

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(4) The violation was not the result of a substantial disregard for safety or security and the circumstances of the violation are not aggravated. "Substantial disregard" means:

(a) In the case of a certificate holder, that the act or failure to act was a substantial deviation from the degree of care, judgment and responsibility normally expected of a person holding that certificate with that type, quality and level of experience, knowledge and proficiency.

(b) In case the violator is not a certificate holder, the act or failure to act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.

(5) The alleged violator has a constructive attitude toward complying with the regulations;

(6) The alleged violator has not been involved previously in similar violations; and

(7) After consideration of elements in paragraphs 205b(1) through 205b(6), a determination is made that administrative action will serve as an adequate deterrent.

c. Evidence of constructive attitude. In making a judgment concerning whether a violator has a constructive attitude, documentation showing the violator's completion of any of the following (including recency of the attendance) may also be considered:

(1) The FAA Accident Prevention Program as volunteer counselor or program assistant;

(2) The Pilot Proficiency Award Program (WINGS);

(3) The Pilot and Aircraft Courtesy Evaluation (PACE) Program;

(4) FAA-sponsored Accident Prevention Program safety seminars on the subject(s) implicated in the alleged violation;

(5) FAA-sponsored, industry-conducted safety seminars on the subject(s) implicated in the alleged violation;

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(6) Operation Raincheck (Air Traffic Service) programs or other visits to air traffic facilities for familiarization and educational purposes; and

(7) Other similar safety- or security-related programs, acceptable to the FAA.

d. Remedial training. A letter of correction will be issued to an individual certificate holder when the following conditions are met:

(1) The inspector determines that administrative action is appropriate under the criteria set forth in paragraph 205b;

(2) The inspector determines that remedial training is appropriate corrective action; and

(3) The individual successfully completes a remedial training program developed under the guidance in Order 8740.1B, General Aviation Accident Prevention Program, Appendix 7.

e. Reporting and correction. A letter of correction will be issued to an air carrier, production approval holder, or other category of certificate holder to which the reporting and correction policy applies, when the following criteria are met:

(1) The inspector determines that administrative action is appropriate under the criteria set forth in paragraph 205b;

(2) The inspector determines that the certificate holder voluntarily and promptly disclosed the noncompliance to appropriate FAA personnel before the agency learned of it (the initial notification may be made informally, but written notification must be made before administrative action can be considered. Holders who fail to comply with FAR 21.3, Reporting of failures, malfunctions, and defects, will not be considered to have promptly disclosed the noncompliance.);

(3) The certificate holder or production approval holder, upon discovery of the failure, has taken or has begun to take immediate action to correct it; and

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(4) The certificate holder or production approval holder has taken, or has agreed to take, remedial action satisfactory to the FAA as may be necessary to preclude recurrence of such failure. Any action agreed to be taken must be in writing and completed to the satisfaction of the FAA.

f. Public interest. In unusual circumstances, administrative enforcement action may be taken notwithstanding the fact that the case does not meet all of the criteria above for administrative action. Administrative action may be taken in those cases only upon a written explanation included in the enforcement file by the division manager of the investigating office of why legal enforcement action would serve no useful purpose and that use of an administrative enforcement action is otherwise in the public interest.

## 206. DETERMINING THE TYPE OF LEGAL ENFORCEMENT ACTION.

a. Sanctions for punitive and deterrent purposes: suspension action and civil penalty action.

(1) General. In general, the primary legal enforcement tool the FAA uses to enforce its regulations against a certificate holder is certificate action. Where the FAA, in its discretion, however, determines that there is a substantial adverse impact on the public interest from disrupted service, and that this impact is not outweighed by safety considerations, it is appropriate to take civil penalty action. For example, the FAA may take certificate action against individual certificate holders and civil penalty action against air carriers, as warranted.

Where there is a need to prevent continuing violations or other egregious conduct, the FAA will take remedial action as needed, regardless of the impact on the certificate holder. In no case will civil penalty action alone be taken where remedial legal action is necessary or appropriate.

(2) Use of both certificate action and civil penalty action for the same violations. Civil penalty action and punitive certificate action generally should not be instituted against a certificate holder for the same offense. If legal counsel is of the opinion that unusual circumstances in any case justify deviation from this policy, legal counsel must first consult with the Enforcement Division (AGC-300).

(3) Change in type of proposed sanction. The initial enforcement action should reflect the agency's best assessment of the appropriate sanction for the violations

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alleged. Each EIR should include all available information bearing on sanction. After the initial action is issued, the type of sanction ordinarily should not be changed unless additional relevant facts or circumstances are presented to the FAA, upon which, in its discretion, determines that the initial proposal was inappropriate. If the action is a significant action for which coordination is required under paragraph 1201a, any change in the type of sanction must be coordinated with AGC-300.

b. Legal sanctions for remedial purposes: certificate action - suspension. Suspension action is appropriate where there is a need temporarily to suspend the privileges of the certificate pending demonstration of qualification. Remedial suspension should ordinarily be used only when the individual does not voluntarily surrender his or her certificate pending reexamination (see Chapter 8).

c. Legal sanctions for remedial purposes: certificate action - revocation. Revocation of a certificate is used as a remedial measure when the certificate holder lacks the necessary qualifications to hold the certificate. The continued exercise of the privileges of the certificate in such circumstances would be contrary to safety in air commerce or air transportation.

(1) Revocation is appropriate whenever the certificate holder's conduct demonstrates a lack of the degree of care, judgment, or responsibility required of the holder of such a certificate.

(2) Revocation is never used as a means to circumvent dismissal of charges under applicable procedural rules.

(3) In cases involving individuals, revocation of a certificate or a rating should be sought whenever there is a lack of willingness or ability to comply consistently with the FAR. A lack of such willingness or ability to comply may be demonstrated, for example, by repeated or deliberate violations of the FAR or by violations that involve grossly careless or reckless conduct. Also, revocation is ordinarily appropriate in egregious cases such as those involving falsification of records.

(4) In cases involving businesses, revocation should be sought whenever there is a demonstration of a lack of qualifications. Revocation would normally be appropriate, for

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example, in cases involving deliberate or flagrant violations or the falsification of records. Revocation also would generally be appropriate in cases in which the certificate holder has committed the same or similar violations in the recent past, or where the certificate holder no longer has, and does not obtain in a reasonable time, the personnel or equipment to conduct its operation in full compliance with the FAAct or FAR.

(5) Section 609(c) of the FAAct mandates certificate revocation when an airman has been convicted of violating certain Federal or state statutes relating to a controlled substance and (a) an airplane was used in the commission of the offense and (b) such person served as an airman, or was aboard the aircraft, in connection with commission of the offense or the facilitation of the commission of the offense. The FAAct also requires the revocation of the registration certificate of any airplane used in the commission of such an offense when the use was permitted by the owner of the aircraft with knowledge that it would be used for such purpose.

(6) Given the relationship between a lack of qualification and the public safety, a decision to revoke ordinarily warrants invoking the agency's emergency authority (see paragraph 206d).

d. Emergency suspension or revocation of certificates.

(1) Whenever it is determined that the public interest and safety in air transportation or air commerce require the immediate effectiveness of a suspension or revocation, an emergency order should be issued. The authority to issue such orders is contained in sections 609 and 1005 of the FAAct.

(2) The emergency authority will not be used for punitive purposes; i.e., to order fixed periods of suspension.

(3) Emergency action should be taken only:

(a) When the certificate holder lacks qualification, or there is a reasonable question as to whether the holder is qualified; and

(b) When the holder is reasonably able as a practical matter to exercise the privileges of the certificate.

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1 If it is known that a certificate holder is unable to exercise the privileges of the certificate, a notice proposing certificate action should be issued.

2 If, after a notice has been issued, the certificate holder again becomes able to exercise the privileges of the certificate and an issue of qualification remains, the case should be converted to an emergency case.

(4) Emergency action should be taken as soon as possible when the need for such action is recognized. Failure to take prompt action does not preclude the issuance of an emergency order when it is appropriate. If a significant delay has occurred, however, circumstances justifying revocation or immediate action may have changed, and consideration should be given to reevaluating the case, including, as appropriate, reinspection or reexamination of the certificate holder. For example, by the time action is ready to be initiated, the unqualified or culpable management personnel may have changed and it may be determined that revocation is no longer required. In such a case, another enforcement action may be used to address the previously discovered violations.

(5) If there is a reasonable basis to question whether the certificate holder is qualified and the holder might reasonably be able to exercise the privileges of the certificate, emergency suspension action pending successful reexamination should be considered.

(6) Oral orders. Ordinarily, orders of suspension and revocation must be in writing, as provided in Chapter 12, Legal Enforcement Action. If necessary, however, to protect the safety of the traveling public and in furtherance of the public interest, the Administrator, the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Enforcement, and each regional Assistant Chief Counsel may issue an emergency order orally to prohibit an air carrier from operating a particular flight with a particular crewmember or crewmembers or to suspend an airman certificate to ensure the safety of flight of civil aircraft in air commerce or air transportation. An oral order must be reduced to writing and served upon the certificate holder as soon as practicable.

(7) Early agency coordination. When an investigating field office becomes aware of a case that might be appropriate for emergency action, that office should immediately notify its regional office representative who, in

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(8) Pre-emergency action notification and briefing. In the case of institutional certificate holders, such as air carriers and repair stations, consideration may be given to notifying the holder in advance that emergency action is considered likely and to briefing the holder on the bases for such action. No certificate holder, however, is entitled to this notification or briefing. A decision on whether to provide this notification and briefing should be made on a case-by-case basis, taking into consideration safety, public interest, and other relevant factors. The agency may notify an air carrier that emergency action is under consideration where, for example, that carrier's management personnel have not been involved in the alleged violations, and the carrier is capable of making immediate personnel or other changes that would bring it into compliance and satisfy all safety requirements. In such case, the matter might be resolvable by consent order, deferred suspension, or some other means short of revocation.

e. Other recommended action. In addition to the recommendation for legal enforcement action, the field office should determine the possible need for any additional or special enforcement action and, when appropriate, submit such recommendations to the regional office. This may include recommendations for any of the following:

(1) Seizure of aircraft. Under certain conditions described in paragraph 1208, when an aircraft is involved in a violation of the FAR and the violation is by the aircraft owner or person in command, the aircraft may be seized. Seizure action, when appropriate, may be recommended regardless of the status of the investigation or legal processing of any prior violation(s).

(2) Cease and desist orders, orders of compliance, and injunctions. Whenever the inspector determines that a condition requiring immediate action exists, in respect of safety in air commerce or air transportation, the field office should bring the matter to the attention of the regional office to consider the appropriateness of issuing a cease and desist order, an order of compliance, or initiating action in U.S. District Court for injunctive relief (see paragraphs 1209, 1210, 1211, 1212, and 1213).

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(3) Criminal prosecution. If the inspector's investigation discloses any evidence of willful conduct that could constitute violations of any criminal provisions of the FAA Act, the HMT Act, or of any other Federal criminal statute, the field office should bring this information to the attention of the regional office. See, Chapter 6. An inspector should not delay a safety investigation, even though an alleged violation may involve possible criminal violations and result in a criminal investigation. Where the specific conduct being investigated may also be in violation of Federal criminal statutes, the investigative file should indicate whether or not criminal investigation or prosecution has been initiated, as well as the office or agency responsible for such action. In addition, the principles of double jeopardy may preclude punitive civil penalty action when criminal prosecution has already occurred for the same conduct. See, U.S. v. Halper, 490 U.S. 435 (1989).

(4) Procedure. When it is determined that aircraft seizure, an order of compliance, a cease and desist order, or an injunction action, or criminal prosecution, is appropriate, the field office should immediately inform the regional office of the facts and circumstances. The inspector should complete and process an EIR as expeditiously as possible.

(5) Consent orders. The investigating program office and legal counsel may agree to resolve certain legal enforcement actions with a consent order. A consent order ordinarily will include an agreement that the violator will take corrective and remedial action as a condition for the suspension or forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction. A consent order, for example, may be an appropriate means for resolving several pending enforcement actions that demonstrate similar, systemic deficiencies in an air carrier's practices and procedures. In this case, the carrier, with the agency's approval, might agree to take prompt corrective action to cure the systemic deficiencies by making improvements to or updating procedures regarding its operations and maintenance practices. This agreement would be set forth in the consent order. A carrier's failure to fulfill the agreement within the terms set forth in the consent order ordinarily would result in imposition of the entire sanction amount.

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**207. DETERMINING THE SANCTION AMOUNT.**

a. FAA Legal Enforcement Actions; Sanction Guidance Policy. After determining that legal enforcement action is necessary, FAA personnel must consult the guidance set forth in the sanction guidance policy.

b. Special emphasis enforcement programs. It is the policy of the FAA generally to avoid instituting mandatory sanction programs. At times, special situations arise, however, that dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing methods are insufficiently effective. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, may be instituted on a national or local geographical basis. The following procedures will apply:

(1) Special emphasis should be used only when other methods of obtaining compliance have not been sufficiently effective. Normally, such a program would be established with a fixed expiration.

(2) A national program will be instituted by a joint determination of the appropriate office or service (e.g., Flight Standards Service, Office of Civil Aviation Security Operations) and the Office of the Chief Counsel. A recommendation for a regional special emphasis program will be made jointly by the appropriate regional division (e.g., Flight Standards, Civil Aviation Security) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may be implemented only with the concurrence of the Chief Counsel and the director of the appropriate office or service.

(3) Before instituting a special emphasis program, consideration should be given to what public notice, if any, is needed. In some cases, publicity may not be appropriate; e.g., where only increased surveillance is needed. In other cases, letters to airmen, pilot forums, and even press releases may be appropriate. Before the FAA institutes a special emphasis enforcement program of general applicability, the public should be informed by a notice in the Federal Register. Also, a tracking method should be maintained to evaluate the effectiveness of the special emphasis program on an ongoing basis until termination of the program.

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208. INVESTIGATING AND PROCESSING ENFORCEMENT CASES UNDER THE GEOGRAPHICAL CONCEPT.

a. The investigation and processing of enforcement cases are the responsibilities of the region where the violation is discovered. Under this geographic concept of enforcement:

(1) The field office responsible for the geographical area in which the violation is discovered must conduct the investigation and process the EIR, through its parent region, consistent with the instructions and procedures of this order, except when this responsibility is transferred as provided in paragraph 208d; and

(2) The parent region, upon receipt of any EIR's from its field offices, must process those enforcement cases, except when this responsibility is transferred as provided in paragraph 208e.

b. Violations frequently involve the responsibilities of offices other than the investigating office such as, in the case of air carriers, the certificate-holding field office and the offices of the several principal inspectors. These offices not only have a vital interest in the conduct and outcome of the investigation, but frequently are prime sources of the information and expertise needed to resolve the matter. For the purposes of this order, these offices will be referred to as supporting field offices or regions. Investigating field offices must ensure that timely and complete coordination is maintained with these supporting regions or field offices throughout the investigation and reporting process. It is the responsibility of the supporting offices to provide the information and assistance required by the investigating office. Similar coordination and support must be maintained between respective regional offices during the processing of the case. Investigating field offices/personnel must contact the supporting field office manager and the principal inspector(s) at the beginning of the investigation to ensure "need to know" requirements are met and to develop a quality investigation applicable to the air carrier involved. The investigating field office also must ensure that timely and complete coordination is maintained with the supporting field office throughout the investigation and reporting process, including the certificate-holding principal's participation in determining the recommended sanction. Cooperation between the reporting field office and supporting field office/principal

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inspector is important and must continue throughout the investigation and litigation stages until final resolution of the case.

c. While the investigating field office and its parent region have complete authority and responsibility for the investigation and processing of violations, appropriate consideration must be given to any comments, recommendations, or requests, including requests for transfer by supporting offices. The investigating field office must advise a supporting office if there are recommendations or requests made by that supporting office that cannot be accepted, along with the reasons therefore. If the matter cannot be resolved to the satisfaction of the supporting office, it may request interregional review by appropriate levels of authority. The parent region will be responsible for resolving issues during this review. Similarly, the parent regional office, when processing violations, must consider and resolve the recommendations and requests of supporting regional offices.

d. The investigating field office may transfer responsibility for investigation, coordination, and reporting to another field office, under mutual agreement, in cases where a transfer would be in the best interest of the Government. For example, a transfer may be considered when:

(1) The bulk of investigative effort or expertise will necessarily be provided by another field office;

(2) The violation occurred within the jurisdiction of another field office; or

(3) It becomes evident that an investigation should be combined with investigations being conducted by another field office. When a transfer is made, the new investigating field office assumes full responsibility for investigation, coordination, and reporting, and the parent region assumes full responsibility for processing. The transferring field office and its parent region assume the role of supporting offices.

e. A region may transfer responsibility for the processing of enforcement cases, or related corrective action, to another region when it is mutually agreed that such transfer is in the best interest of the Government.

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(1) The Assistant Chief Counsel responsible for processing the legal enforcement case may transfer the case to another Assistant Chief Counsel by mutual agreement that a transfer is in the best interest of the Government.

(a) The decision to transfer a case should be made on the basis of the need to facilitate the efficient and timely processing of legal action due to considerations such as the location of scheduled conferences, discovery proceedings, hearings, court actions, the availability of witnesses or participants, or other compelling reasons.

(b) Consideration should be given to the fact that transferring the case to another region, such as for the purpose of holding an informal conference, often results in duplicative efforts by the respective regions, thereby eroding governmental efficiency, when the case must later be retransferred for trial. Special care should be given not to transfer a case involving an air carrier or its personnel simply to accommodate the requester or his counsel, since air carrier personnel and their counsel generally have company-provided access to the necessary air transportation to reach the originating office. This advantage is generally not available to general aviation airmen who may be genuinely inconvenienced by having to travel outside their geographic area.

(c) In the event that a case is transferred, the receiving office will have full authority to dispose of the case in accordance with current agency policy and procedure. There may be special circumstances, however, when a transferring office requests to be consulted before final disposition of the case. For example, this may occur where the experience of the reporting inspector is necessary for a complete understanding of the case.

(2) Field office responsibility for corrective action may be transferred to another field office when a transfer would facilitate the effective and timely implementation of the required corrective action. The field office receiving the case has complete control over the disposition of the case.

f. Offices responsible for the final closing of enforcement cases, both administrative and legal, should ensure that all investigating and supporting offices are apprised of final disposition.

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209. COMPLEX OR CONTROVERSIAL ENFORCEMENT CASES. For purposes of this paragraph, "complex or controversial" cases are those requiring or warranting substantial coordination among FAA elements or extensive preparation for potential enforcement litigation.

a. The following are examples of potentially complex or controversial cases:

(1) Alleged violations warranting initiation of a formal investigation in accordance with FAR Part 13.

(2) Cases requiring extensive interregional coordination.

(3) Cases involving extensive violations by, or significantly severe penalties against, major institutional respondents (such as air carriers and aircraft manufacturers).

(4) Cases that, because of the allegations or parties involved, will have national impact.

(5) Cases involving or that may involve seizure of aircraft or the need for specialized enforcement action such as injunction.

b. To ensure the effectiveness of the enforcement program in complex or controversial cases, it is essential that these cases be identified at the earliest possible stage. In all cases, it is the FAA investigative employee's responsibility initially to determine the investigative effort to be undertaken. These cases can best be identified in terms of the nature and scope of this effort. FAA investigative personnel should anticipate, to the extent possible, the likelihood that a case will involve complex and substantial issues of fact or will otherwise require a special investigative effort, or will receive unusual publicity. Typical considerations include:

(1) Whether the case substantially involves responsibilities of other FAA offices. Interregional coordination is often required, for example, in the case of complex or controversial air carrier maintenance violations that may involve engineering analysis and other type certification issues.

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(2) Whether the action contemplated is consistent with action being taken in other regions and with national policy.

(3) Whether the case involves controversial regulations; e.g., the use of flight data recorder tapes.

(4) Whether there are allegations of FAA "complicity."

(5) Whether potential criminal violations exist. If so, appropriate coordination with the Department of Justice or the Office of Inspector General is required.

c. FAA investigative personnel, through their office managers, should alert the appropriate division in the regional office, whenever a complex or controversial case is under investigation. For complex or controversial Flight Standards cases, the regional office should then alert the Flight Standards National Field Office (AFS-500). This will enable timely planning of the investigative effort to be undertaken. The Division Manager, in turn, must consult with the appropriate Assistant Chief Counsel to determine, for example, whether an order of investigation is appropriate and what types of records or other evidence should be sought. To the extent practicable, counsel should notify AGC-300 whenever it appears that a complex or controversial case is under investigation with the potential for national significance.

d. Experience in complex or controversial cases has demonstrated the importance of legal counsel's participation at the investigative stage. Rather than awaiting completion of the report of investigation, the Assistant Chief Counsel should take the initiative early to ensure that investigative personnel are counseled properly in evidentiary matters and that only legally provable violations are pursued. Counsel should personally observe the investigative effort whenever necessary for proper development of the complex case. In cases likely to lead to civil penalty or other litigation in the United States courts, the Assistant Chief Counsel should advise the U.S. Attorney or the Department of Justice, as appropriate, as early as practicable.

e. As in all enforcement cases, success in prosecuting violations in a complex or controversial case depends upon the quality of the investigation supporting it. Early involvement by counsel may reduce the need to supplement an investigation after review by counsel.

210. - 299. RESERVED.

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## CHAPTER 3. ENFORCEMENT RESPONSIBILITIES

300. PURPOSE. This chapter describes the responsibilities of various FAA elements in carrying out the FAA's compliance and enforcement program.

301. COOPERATION AND COMMUNICATION WITHIN FAA.

a. All offices and services, including those which do not have primary responsibility in the enforcement program, shall assist in the execution of the program.

b. To assure the highest possible degree of coordination and consistency in carrying out the enforcement program, elements of the agency engaged in investigation or prosecution of enforcement cases shall maintain communication with other elements whose responsibilities are or may be affected by such cases.

302. HEADQUARTERS. Within FAA headquarters, the Chief Counsel and the Executive Director for Regulations and Compliance have the overall responsibility for carrying out the enforcement policies established by the Administrator. These offices establish procedures and guidance for implementation of the agency's enforcement program, and monitor and evaluate regional enforcement activities to ensure effectiveness and uniformity. They also handle special investigations and enforcement actions as directed by the Administrator. They will advise the Administrator of any deficiencies or discrepancies and will undertake any special investigative or enforcement action that may be directed. The Chief Counsel may determine that the handling of legal enforcement action in a case of national importance be coordinated with or transferred to headquarters. The Office of the Chief Counsel will, when appropriate, review enforcement actions taken by the regions.

303. REGIONS.

a. Program divisions. The appropriate regional divisions implement and manage the FAA Enforcement Program within their respective areas of responsibility as prescribed in this order. All actions taken by field personnel shall be reviewed by appropriate regional division managers or their designees to ensure fair and equal treatment and provide assurance that action taken will serve to promote safety and protect the public interest. The regional division manager shall ensure that their enforcement program, as well as any individual enforcement action, is handled in accordance with the Order and will periodically provide the investigating office with the status of enforcement actions investigated by that office. Regional offices shall advise their counterparts in Washington of significant enforcement activities.

b. Assistant Chief Counsel. The Assistant Chief Counsel process all violation reports requiring legal enforcement action or referral, and provide legal guidance and counsel on enforcement matters, except those violation reports identified in paragraph 1002.

304. AERONAUTICAL CENTER. The Assistant Chief Counsel for the Aeronautical Center is responsible, pursuant to Title 5 of the FA Act and FAR Part 13, for suspending or revoking an aircraft registration certificate for any cause that renders such aircraft ineligible for registration.

305. FIELD OFFICES. Field offices conduct surveillance inspections of persons, aircraft, or operations subject to the regulations to determine compliance with the regulations and any lack of qualifications, and investigate, coordinate, and report violations of all regulations which are discovered within the geographical area and for which they have enforcement responsibility.

306. AIR TRAFFIC SERVICE. Air traffic control personnel at centers, towers, and flight service stations are in a unique position to observe apparent violations or lack of qualification of airmen. Each Air Traffic Service facility is responsible for promptly notifying the appropriate FAA field office of any incident or complaint which may involve violations of Federal regulations for which the FAA is responsible. Each facility shall provide the appropriate FAA element with factual information concerning such incidents, including tapes, transcripts, etc., as soon as permitted by their air traffic control responsibilities but, in any event, not later than 24 hours after becoming aware of an incident or after a request from an FAA inspector.

307. ALL AGENCY EMPLOYEES. Any agency employee who becomes aware of an apparent violation by, or apparent lack of qualification of, any person subject to the Federal Aviation Regulations, shall report such information to an appropriate FAA office. Employees shall cooperate with any further investigation and provide testimony or other information as required. All agency employees involved in the enforcement process should be alert to their responsibility to identify problems involving regulations or enforcement procedures which need correction. For example, when a regulation has proven too vague for effective enforcement, or a current procedure unnecessarily cumbersome, the matter should promptly be brought to the attention of the regional division. The regional division shall forward the recommended changes to the Assistant Chief Counsel for Regulations and Enforcement (AGC-200), through the Assistant Chief Counsel for the region. AGC-200 will acknowledge receipt of the recommendation, and coordinate an evaluation of the recommendation with the headquarters office(s) of primary responsibility for the regulation or procedure. The individual making the recommendation will be advised as to any decision or action taken on the recommendation.

308. OFFICE OF INSPECTOR GENERAL. The Inspector General Act of 1978 (5 USC Appendix 1) established the Office of Inspector General in the Department of Transportation, as an independent and objective unit to conduct and supervise audits and investigations relating to programs and operations of the Department.

a. In setting these responsibilities, the Office of Inspector General --

(1) Provides leadership and coordination, and recommends policies designed to promote economy, efficiency, and effectiveness of audits and internal investigations to prevent and detect fraud and abuse in Department programs and operations; and

(2) Provides a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of Department programs and operations, including the necessity for, and progress of, corrective action.

b. The Inspector General does not have any responsibility or authority for enforcing compliance with aviation safety regulations under the jurisdiction of the FAA.

309.-399. RESERVED.

## CHAPTER 4. INVESTIGATION OF VIOLATIONS

400. PURPOSE This chapter furnishes the inspector with general guidelines for an investigation. The guidelines are not all inclusive and are not a substitute for common sense and good judgment. The investigation will vary with the type of violation. If in doubt, call legal counsel.

401. ROLE OF THE INSPECTOR IN AN INVESTIGATION. The inspector's role in an investigation is to gather facts, evidence, and documents, to analyze that information, and to make recommendations concerning enforcement actions. The inspector should recognize that Enforcement Investigative Reports (EIR's) may be reviewed by several levels of the district office, the region, and legal counsel before an agency determination is made as to whether agency enforcement will be taken and if action is taken, what sanction will be imposed. As a result, if the inspector discusses with the alleged violator the likelihood of enforcement, or possible sanctions, there is a likelihood of misleading the alleged violator or making statements which may later prejudice prosecution of the case. The inspector should, therefore, avoid discussing with the alleged violator or others whether action will be taken and possible sanctions.

402. PLANNING AND INITIATING THE INVESTIGATION.

a. Upon receipt of information indicating a possible violation, the inspector should determine whether there is any basis for an investigation.

b. Before initiating an investigation, an inspector should consider the circumstances and the nature of the violation, and develop an investigative plan of action. As the investigation progresses, reevaluate the plan and revise as necessary. Coordinate the plan with supervisors, supporting offices, and legal counsel, if necessary. Consider the following:

(1) What section of the Act or regulation is involved in the case? Read the regulation. Determine which elements of the regulation are necessary to establish a violation. Use the elements to form an investigative plan.

(2) What evidence is needed? Where is it located? How will it be obtained?

(3) What records should be checked? Will they be furnished voluntarily?

(4) Which witnesses, including the alleged violator, need to be interviewed? At what stage of the investigation should they be interviewed? Are written statements needed? (Note: in all cases a signed statement should be obtained from each witness, if possible.)

(5) Will there be a need for the Administrator's power under Section 1004 of the Act to subpoena witnesses and records?

(6) Is there a possible criminal violation?

(7) Is there a need for immediate action? Consider an emergency action or other immediate action in situations where delay for routine handling may jeopardize public safety. For instance, an airworthiness inspector who finds an air carrier aircraft about to be used in air transportation, that is not in condition for safe operation, shall notify the air carrier of that condition in accordance with Section 605(b) of the FA Act. (See, Figure 4-1).

(8) The plan should ensure the evidence gathered will establish who did or did not do what, where, when, why, and how.

(9) Reevaluate the plan.

c. In all investigations, an EIR report number (case code number) will be assigned for logging and processing within the ADP system. It provides future reference to all matters relating to the case (see Chapter 14). When formal fact finding investigations are conducted by a specially designated team, the team should assure that a field office or region is designated to assign a case code number for the investigation. The special team should coordinate with the field office, and prepare an EIR.

d. Where the alleged violation involves an air carrier operating certificate, a production certificate, a type certificate, an air agency certificate, or a standard security program, the investigating office should alert and coordinate with the appropriate supporting office prior to issuing the letter of investigation. Telephone notification is encouraged. The team should provide the supporting office copies of all letters of investigation.

e. 6-month rule. Where the alleged violation occurred more than 6 months prior to the issuance of the Notice of Proposed Certificate Action, suspension other than for a lack of qualifications may be barred by the NTSB "Stale Complaint" rule (49 CFR 821.33), except where: (1) the FAA was not aware of the violation until well after its occurrence and would not, through diligent effort have known of the violation at an earlier date, in which case the action may be brought with a "reasonable time" after the FAA became aware of the violation, or (2) in those cases where "good cause" is shown for proceeding notwithstanding the delay. To avoid being unable to take suspension action where appropriate, all cases must be investigated expeditiously to afford legal counsel sufficient time to issue the Notice before action is barred. Doubtful cases should be coordinated with legal counsel as early as possible.

#### 403. LETTERS OF INVESTIGATION.

a. Although not required, an alleged violator normally is notified in writing of an agency investigation. The letter should state that an agency investigation is being conducted, and should invite comments from the alleged violator on the circumstances of the incident. A copy of the letter should be included in the file. Where additional violations are discovered during the investigation, the inspector should use judgment as to whether another letter of investigation should be sent. Evidence should show that a violation may exist before a letter of investigation is issued. Failure to send a letter shall not obstruct the ongoing investigation.



b. In cases involving companies with complex organizational structure, care should be taken to assure that the letter is addressed to the responsible official. The investigating inspector may obtain advice on such matters from the supporting office.

c. In the preparation of the letter of investigation, the following guidelines should be observed (see sample letters of investigation, Figures 4-2 through 4-7):

(1) Although the letter is not intended to be a statement of charges, it should inform the alleged violator of the activities being investigated. Specific sections of the Federal Aviation Regulations should not be cited unless specific regulatory reference is needed to accurately identify the incident. If the facts and circumstances are adequately presented, the letter of investigation need only state that there may have been a violation of the Federal Aviation Regulations.

(2) Specify a time limit for reply. Normally 10 days is sufficient. Additional time may be necessary in foreign cases. Any reply received after such deadline should be considered. If the file has been forwarded to the regional office, the reply should be forwarded with an analysis, including a discussion as to whether the reply changes the inspectors conclusions.

(3) Request that specific relevant documents be retained or made available.

(4) If the alleged violator is an individual, include the Privacy Act Statement. See Figure 4-9.

d. The letter of investigation generally is sent by certified mail with return receipt requested, so as to establish a record of notice to the party under investigation. If personally delivered, document the delivery in the file.

e. Distribution of the letter of investigation.

(1) The original letter of investigation is directed to the alleged violator.

(2) Send a copy to supporting FAA offices.

f. If at the conclusion of the investigation there is insufficient evidence to pursue the matter, the inspector may write the alleged violator a letter advising that the evidence is insufficient to support the violation and that the matter is not being pursued. In cases in which there is a reasonable question whether evidence supports a violation, the inspector should consult regional divisions prior to advising the alleged violator. See Sample Letter of Notification, Figure 4-8.

#### 404. OBTAINING VIOLATION HISTORY AND OTHER INFORMATION.

a. Violation history and other information needed for the investigation should be obtained at the beginning of the investigation. Violation and accident information may be directly retrieved from several automated information systems, as follows:

(1) Violation history and/or accident history may be obtained from the AID/EIS Display and Profile program under EIS. This program provides access to essential data taken from several separate data files of the Accident/Incident Data System (AIDS) and the Enforcement Information System (EIS). Problems or questions should be addressed to the local EIS system manager or the ASAS hot line.

(2) EIS records containing an airman rebuttal statement, under the provisions of the Privacy Act, are available only from AVN-120. Requests for release of this information should be referred to the National Data Safety Branch, AVN-120.

(3) In addition to retrieving the information above by direct access to the appropriate system, the user may obtain such information through the commercial timeshare vendor. This service can provide more complex interrogations than the simple available query under the AIDS/EIS Display and Profile. Contact the National Safety Data Branch or your local Management Systems Division for information on timeshare access and usage.

(4) Requests may be submitted to National Safety Data Branch, AVN-120 for a written reply.

b. Other information may be obtained as follows:

(1) Airman certificate and aircraft registration data may be obtained from the National Data Base Interface (NDBI) application which provides access to the Airmen and Aircraft Registry files located on equipment at the Mike Monroney Aeronautical Center's Data Services Division (AAC-300). Questions regarding the information should be addressed to the Aircraft Registry (AAC-250) or Airmen Registry (AAC-260) Branches at the Aeronautical Center. Problems or questions concerning system access should be directed to the ASAS hot line.

(2) Criminal history and background information should be sought through the regional Civil Aviation Security Division.

(3) Airmen medical records may be obtained from Aeromedical Certification Branch, Mike Monroney Aeronautical Center, Oklahoma City.

#### 405. EVIDENCE OF VIOLATIONS.

a. The object of the investigation is to obtain evidence to establish whether a violation occurred. Evidence includes all the means by which any alleged fact tends to be established or disproven. It is the means by which

we prove or establish the facts set forth in FAA legal notices. If there is doubt as to the relevance of a particular piece of evidence, it should be secured and preserved from the outset.

b. Evidence may be obtained from any place or source where it is legally available. An investigation at the scene of a violation often will assist the inspector in the collection and analysis of evidence. There is no substitute for the inspector's personal observations, which should be placed in writing as soon as possible. The inspector must not only accurately obtain the facts and circumstances, but must prepare a report which clearly conveys such facts and circumstances.

c. Hearsay evidence, in many circumstances, may be used to prove violations. Inspectors should not hesitate to report any information that could possibly be used as evidence. Hearsay evidence can be very helpful to the investigator in that it often leads to persons who do have direct knowledge of the incident, or knowledge of important documents. Furthermore, it may be helpful to the attorney in cross-examination of a hostile witness or the person involved. For these reasons, the inspector should report all evidence that could be pertinent to the case.

d. The types of evidence used to document the investigative report include witness statements, photographs, charts, maps, and diagrams; documents and records; and physical evidence.

#### 406. INTERVIEWS.

a. Generally, all knowledgeable witnesses of an alleged violation should be interviewed and the information reported. Where there is more than one person who witnessed an incident, the number of those witnesses to be interviewed will depend largely upon the nature of the case, the proof required, and, to some extent, witness availability. Duplicative or repetitive testimony is desirable because it gives weight to the evidence and insures the availability of witness testimony in the event that one or more key witnesses later are unavailable. Selection of the particular witnesses should be based on the likelihood of their knowledge about the incident and their competence to relate the information sought. Some common sources for the identity of possible witnesses are:

- (1) Passenger manifests.
- (2) Air traffic controllers.
- (3) Records and personnel of organizations, such as air carriers, air taxis, etc.
- (4) Airport personnel.
- (5) Local restaurants or bars that may have served the person.
- (6) Pilots and mechanics who may have pertinent information.

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- (7) Persons who work or reside in the area of the incident.
- (8) Health personnel who may have examined the person involved.
- (9) State and local police.

b. If the inspector witnesses a violation, the inspector should prepare and sign a statement covering all of the pertinent facts of which the inspector has personal knowledge.

c. Every effort should be made to interview witnesses face to face or by telephone. The technique used will vary depending on circumstances, but the following general guidelines may be of assistance.

(1) Plan the interview to assure that the interviewer is thoroughly prepared and that the best environment in which to hold the interview is selected.

(2) Put the person interviewed at ease.

(3) Maintain control of the interview.

(4) Assure from the outset that the witness understands that any information furnished may be used as evidence in subsequent enforcement proceedings. No promises of confidentiality can be given without prior consultation with FAA legal counsel. However, if a witness requests immunity in exchange for information regarding safety, the inspector shall immediately proceed in accordance with paragraph 1302 of this Order.

(5) Do not discuss with witnesses any possible enforcement action or sanctions, or grants of immunity. Do not divulge sources of information, except where necessary.

(6) Request a signed statement.

(7) Plan questions which will accomplish the objective. The broad or general question often is effective to open up areas of discussion. Specific searching questions are good for getting specific information, clarification, and conclusions.

(8) Be attentive and listen.

(9) Take notes if practical to do so. This will vary with circumstances, but if notes are not taken at the interview, make notes immediately after the interview and document the time and date when the interview took place.

(10) Summarize the interview with the witness to verify the interviewer's understanding and recollection of all pertinent points. Give the witness an opportunity to make any additional comments.

(11) Prepare a separate report of the interview, including the inspector's own observations and evaluations. Note that this should be a separate item of proof in the EIR, not simply part of Section D.

(12) When an essential witness refuses to cooperate, the Administrator's authority under Section 1004 of the FA Act may be used. See Chapter 7, Formal Fact-Finding Investigations.

d. In many cases the most important witness to be interviewed is the person making the allegation. Frequently in FAA investigations, the source of an allegation against a company is an employee or agent of that company. The investigation should be planned and conducted to assure that these allegations are verified from other sources if possible before company officials are consulted. For example, if a certificate holder's mechanic reports a violation, every effort should be made to verify the allegation through interview of the reporting mechanic and other mechanics, personal observations, and inspection of company records before contacting company management to discuss the issue. When interviewing company officials, great care must be exercised to provide reasonable protection to the source.

e. Where possible, a written statement should be obtained from each witness. The written statement should contain a precise and complete account of those facts pertinent to the violation. It should include what the person said, did, or perceived by his or her senses and the how, when, what, why, and where of that perception. It should also include the witness' complete name, address, telephone number, occupation, and aeronautical experience. Any opinions should be shown as such.

(1) A written and signed statement is especially important under the following circumstances:

A. When the information is complex, involves data, or is controversial.

B. When the witnessed incident involves injury or death or a significant aviation incident, such as an aircraft accident or hijacking.

(2) The best statement is one prepared by the witness. When necessary, however, the inspector may assist the witness in drafting and framing a statement. In doing so, the inspector should take care not to dictate the statement and should make an effort to assure that the statement is complete, concise, and to the point.

(3) If the person interviewed refuses to give a signed statement, the inspector should prepare a statement based on information furnished by the witness. The witness should then be asked if he agrees to the substance. If he does agree, but continues to refuse to sign, the inspector should make a notation to that effect and date and sign it along with any witnesses.

f. Normally, the alleged violator will be interviewed, even though he or she may have furnished written information. If the interview is not possible or necessary, indicate the reasons why it was not accomplished.

(1) The alleged violators are interviewed primarily in order to give such persons an opportunity to tell their side of the story, and to help to establish all pertinent facts and circumstances.

(2) The time for interviewing the alleged violator can be a critical decision. At times it is best to accumulate solid evidence with which to interview the alleged violator. At other times, an early interview will develop investigative leads. Good judgment dictates when the interview should be conducted.

g. If the alleged violator or other witnesses are located in another field office area, it may be necessary to obtain assistance for the interviews. Make the request to the manager of that office. Give full details of the assistance and information required. If delays are encountered, the office requesting the information should be notified immediately. Cooperation is stressed between offices, and the appropriate regional division should be alerted to any problems encountered in obtaining assistance or information. When the manager has assigned an inspector(s) to comply with the request, direct contact is authorized between the investigating and supporting inspectors.

407. PHOTOGRAPHS. A camera loaded with fast, color film often is an inspector's best friend. When photographs are obtained, have the names and addresses of the photographers and the date and time the pictures were taken written on the back of the prints. Further, record the technical data of the film, shutter speeds, lens opening. List the custodian of the prints and information on the custody of the negative. When photographs are used in lieu of physical evidence, pertinent information as to the location and security of the physical evidence should be documented.

408. CHARTS, MAPS, AND DIAGRAMS. Charts, maps, diagrams, and photographs should be obtained, as appropriate, to show physical features, such as airports, terrain, congestion, flight paths, obstructions, aircraft parts, etc. They may be useful when interviewing witnesses. They should be clearly labeled showing the source of the document, including the person who made any notations on the document (such as a depiction of a flight path on a chart). Copies of charts or an actual chart should be included in the report and the chart should be current as of the date of the violation. If a copy of the chart is used, the front page with the effective date of that chart should also be included. The inspector should make notes of the intended purpose of such exhibits for use when assembling the report.

409. DOCUMENTS AND RECORDS. Documents and records consist of National Weather Service reports, load manifests, manual pages, communication logs, aircraft logs, etc. This type of evidence may be essential to prove the case or may provide backup or background information. Too often a witness statement is obtained without supporting documentary evidence. Thereafter, the witness may forget, flee, lie, or die and a case may fail for lack of evidence. Do not overlook the importance of this type of evidence.

a. Obtaining documents and records.

(1) Documentary evidence perhaps is the most common type of evidence used by the inspector. Its value frequently is overlooked not only as evidence but as an investigative tool to use for cross-reference, verification of oral statements, and interviews.

(2) The investigating inspector should take prompt action to review and obtain necessary records. Too often, vital records are lost, destroyed, or modified when prompt action is not taken. If it is apparent that the documents or records will not be provided voluntarily, the inspector should consult with legal counsel to arrange for legal subpoena (see Chapter 7). Documentary evidence should be specifically identified, accounted for, and protected from loss, damage, or alteration. If there is doubt about the relevance of particular records, they should be secured and preserved from the outset.

(3) Where necessary, appropriate arrangements should be made for retention of records. Promptly notify the organization or person holding the records that specified records are to be held for inspection. If the records may not be retained as requested, make immediate arrangements, in coordination with legal counsel, for their preservation. Notice may be written or oral.

(4) The inspector should always indicate when, where, and from whom the document was obtained, and who from the FAA obtained it. This may be done with a stamp on the reverse side such as in Figure 4-10.

(5) For non-FAA persons or organizations, request only one copy of each document. The investigating FAA office is responsible for reproducing additional copies needed.

(6) When documents such as company manuals, FAA-approved airplane flight manuals, or manufacturer's service bulletins contain information necessary to a case, pertinent portions should be reproduced and made a part of the report.

(7) Making copies of documents. When copies of documents are made, care should be taken to insure that all copies are legible and are accurate. Use a stamp substantially in accordance with that shown in Figure 4-10 to document that you have reviewed each page of a copy of a document and compared it with the original. The stamp should be placed on copies of documents in a manner that does not obscure any of the information contained in the document, such as by placing it on the reverse side. Wherever possible, documents or copies thereof should be preserved in their original state. Wherever possible, avoid making marks on the face of documents. If marks or explanations are necessary for explanation or clarification, where possible, make them in an overlay, or include another copy of the document with marks on the copy.

(8) Care should be exercised to assure that the documentary evidence obtained was current and applicable at the time of the incident in question. On the other hand, revisions to a manual, subsequent to an incident, may be important to some cases.

b. Air Traffic Service records.

(1) Air Traffic Service facilities are responsible for prompt notification to the appropriate field office of any incident or complaint involving a civil or public aircraft which may involve a violation of Federal Aviation Regulations. Such notification normally will be communicated by personal contact or telephone, during regular working hours, to the field office having jurisdiction. After regular working hours, or on weekends or holidays, initial notification will be made through regional communication channels or the assigned field office accident standby inspector.

(2) The purpose for this initial contact is to convey to the field office the essential facts as they are known at the time, and from which a decision may be made as to the need for further investigation. If the field office decides that further investigation is or most probably will be warranted, the field office representative should, in all cases, request that the Air Traffic Service facility retain the originals of all records related to the incident or complaint, such as recording tapes, flight progress strips, computer data, briefing logs, etc. This requirement is essential in view of the 15-day storage limit which is applied to the retaining of such records in the absence of a special request.

(3) Thereafter, within 5 working days, the field office should advise the facility(ies) that it is either proceeding with the investigation, or the matter does not warrant further investigation and the hold on records and statements is released. If a decision is made to proceed, the field office should ask the Air Traffic Service facility to forward an Incident Report, FAA Form 8020-11, with Air Traffic Service records and other data, as evidence, in accordance with the following procedures:

A. Air Traffic Control tapes. The inspector should identify the pertinent portion of all tapes that are relevant to the incident under investigation and, with respect to each such tape, request the facility to (1) make a cassette recording of that portion of the tape, and (2) cut and preserve that portion of the original tape. When a violation report is prepared, the cassette recording should be included as an exhibit. The facility should not be required ordinarily to make a transcription of the pertinent portion of the tape until a transcript is needed by legal counsel for use in processing a legal enforcement action.

B. Automated Radar Terminal System (ARTS) Data Recording and Analysis. The ARTS equipment has the capability to provide an altitude, speed, and heading readout. The use of the ARTS Data Reduction and Analysis (DR&A) information can provide valuable data for enforcement purposes.

(i) This information may be used to corroborate other available evidence or to resolve conflicting evidence present in a given case.

(ii) When the inspector determines, pursuant to the above policy, that ARTS data is needed, the field office manager should request the required DR&A from the manager of the appropriate Air Traffic facility.



(iii) Before a request is made, the facts, time, place, date of occurrence, and a valid need for this information should be provided by the requesting office.

C. Other Air Traffic Service records, such as flight plans and flight progress strips which the inspector determines to be pertinent to the investigation, should be requested from the appropriate facility.

D. When obtaining one of the above records from an Air Traffic facility, the inspector should also request written statements from facility personnel who have direct knowledge pertaining to the incident.

c. National Weather Service records. The inspector should carefully analyze the case to determine the extent weather is involved and obtain certified copies of sufficient data from the National Weather Service Office involved to permit an intelligent weather analysis appropriate to the case. Legal counsel may request authenticated copies of the records for use in the legal proceeding.

d. Company records. Requests or subpoenas for records of organizations, such as an air carrier, air taxi, manufacturer, or airport operator, should be made to the official custodian or a company officer. If an accident is involved and company records are needed, coordinate with the NTSB before the records are requested.

e. Aircraft flight recorder tapes. Under Section 13.7 of the Federal Aviation Regulations, the FAA is authorized to obtain and use flight recorder data in any investigation conducted by FAA since it involves a record required by the Federal Aviation Regulations to be maintained. The regulation further authorizes the use of flight recorder data in FAA enforcement actions since the regulations that require flight recorders in aircraft do not specifically limit or prohibit such use. If the decision is made to use the flight recorder material in enforcement proceedings, a certified readout of the tape will be required. Requests for a readout should be made as follows:

(1) Obtain a release for the tape from the owner or that owner's designated representative.

(2) Obtain the calibration tape.

(3) Pack the flight recorder and calibration tapes so as to prevent damage, and ship to the Office of Aviation Safety, Washington, D.C., Attention: ASF-100.

(4) Send a letter of transmittal with the following information (Note: The FAA Representative should be identified in the forwarding documentation):

A. Owner's full name and address.

B. Make and model of aircraft involved.

C. Aircraft registration number.

D. Place and date of occurrence.

E. A brief description of the occurrence or incident and the reasons for the readout request.

F. The name of the FAA person or office to whom the tape should be returned.

(5) Ship the package by certified mail, return receipt requested.

(6) During the readout, have an FAA representative present. The representative will observe the readout and be able to testify as to its authenticity.

f. Cockpit voice recorder. The use of a cockpit voice recorder record as evidence in any civil penalty or certificate action is prohibited by the Federal Aviation Regulations (see FAR 121.359 and FAR 135.151).

g. Other government records. If a Federal or local law enforcement agency has investigated the incident, it may have valuable information. Such records often include the names of witnesses who should be interviewed by the investigating inspector. If there is any type of court proceeding, the certified copy of the court order should be obtained along with any other record of court proceedings as necessary. When violation of a foreign law or regulation is being reported, a copy of such law or regulation, in effect at the time of the violation, should be included in the investigative report.

h. Medical records. Medical records by a physician or hospital regarding treatment or tests of a person involved usually are privileged and generally cannot be obtained without the consent of the individual. If consent is not given, a subpoena may be obtained pursuant to Section 1004 of the FA Act. Release of medical records in the custody of government agencies, such as the Veterans Administration or Department of Defense, may be subject to the provisions of the Privacy Act and the Freedom of Information Act. Where required, every effort should be made to obtain from the person involved a written consent in order to obtain such records. The person involved should be presented with an FAA Form 8500-21 (5-76), "Authorization for the Release of Medical Information to the FAA," for this purpose.

410. PHYSICAL EVIDENCE. Physical evidence consists of objects or items, such as a cracked propeller, defective spar, or worn engine parts or cables, pertinent to the violation. Care must be taken so that the handling of physical evidence does not result in damage, loss, or alteration. The inspector must be prepared to testify to this fact. A chain of custody should be established. The purpose is to show who has had custody of it and that the evidence has not been changed or altered. The best procedure is to lock up the evidence in a safe place until time of hearing. If this is not possible, the inspector should know and record the name(s) of any person who has taken possession of the piece of evidence. In any event, the report should specify the location of physical evidence. (Use FAA Form 8020-2, as appropriate.)

411. SUBMISSION OF ADDITIONAL EVIDENCE/MATERIAL. The responsibility to report the facts does not end with the submission of the Enforcement Investigative Report. To have a fair enforcement program, all relevant material must be considered, no matter how late it may come to our attention. Therefore, any data which subsequently comes to the inspector's attention should be immediately forwarded, along with the inspector's evaluation and recommendations concerning the material. Additional investigation may also be requested by legal counsel. The distribution for the supplemental material will be the same as for the initial report.

412. COORDINATING THE INVESTIGATION.

a. Other FAA offices having investigatory responsibility.

Investigations under the jurisdiction of the FAA are the responsibility of the Offices of Flight Standards, Aircraft Certification Service, Civil Aviation Security, Airport System Development, and Office of Airport Safety and Standards, for appropriate investigations of alleged violations. Therefore, when it appears that violations of the regulations within the jurisdiction of other offices may be involved, it is essential that appropriate coordination be maintained. In such cases, investigation and enforcement should be pursued against all regulations believed violated, in a coordinated effort.

b. Other field offices. Consistent with the geographical concept of investigation and processing of enforcement cases, as discussed in paragraph 207, it is essential that coordination be maintained with other field offices which have an interest in the investigation, especially in the case of other certificate holding offices. Coordination serves to ensure that --

(1) Other field offices are provided the opportunity to furnish any information which may be pertinent to the investigation; and

(2) The investigating field office has access to information which is known or available to the FAA and which might not otherwise be included as part of the investigation and report.

c. Other government investigatory agencies. Some matters within the investigatory jurisdiction of FAA may also involve violations of statutes or regulations that are within the investigatory jurisdiction of another government agency. In such a case, the inspector shall proceed as follows:

(1) Immediately report the matter to the FAA regional office. However, when the situation requires immediate action, the inspector may contact the appropriate governmental agency directly.

(2) Request that agency to furnish any information it has which may be pertinent to the FAA investigation.

(3) Handle possible criminal violations within the jurisdiction of the Department of Justice or other agencies according to Chapter 6.

413. VOLUNTARY SURRENDER OF CERTIFICATE. At any time after the filing of a violation report, a certificate holder involved may surrender that certificate to an inspector. Where legal action may be involved, the Assistant Chief Counsel should be consulted regarding terms of the surrender. Procedures for voluntary surrender are contained in FAA Order 8710.4, Certification: Pilots and Flight Instructors, paragraph 13.

414.-499. RESERVED.